

ATTACHMENT A (W/O EXHIBITS)

September 1, 2004

CENTRAL

The Hon. Christine Gregoire
Attorney General
Post Office Box 40100
Olympia, WA 98504-0100

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ATTORNEY GENERAL
OF WASHINGTON

Mr. Norm Maleng
King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104

RE: RCW 42.17.400 "Citizen Action" 45-day notice of campaign finance violations of the Washington State Labor Council, the Executive Board and Political Director:

Rick Bender, President
Alan Link, Secretary-Treasurer
Linda Lanham, Vice President
Sharon McCann, Vice President
Ron McGaha, Vice President
Emily Van Bronkhorst, Vice President
Steve Williamson, Vice President
Darrell Chapman, Vice President
Don Houtchens, Vice President
Pat Thompson, Vice President
Bob Guenther, Vice President
Lynda Hart, Vice President
Mike Phillips, Vice President
Larry Johnston, Vice President
Dale Palmer, Vice President
Mark Reavis, Vice President
Rick Colon, Vice President
Beth Thew, Vice President
Vance Lelli, Vice President
Joe Murphy, Vice President
Patty Rose, Vice President
Kristin Farr, Vice President
Diane McDaniel, Political Director

Dear Ms. Gregoire:

This complaint is to notify you of numerous violations of campaign finance laws by the Washington State Labor Council (WSLC). We believe the Washington State Labor Council's almost exclusive political activity needs to be properly disclosed, and where illegal, stopped.

We ask the state to investigate the violations highlighted below and take legal action to secure a court order to prevent these violations.

I. UNREPORTED INDEPENDENT EXPENDITURES (Violation of RCW 42.17.550)

In every election cycle, the WSLC commits thousands of dollars for campaign activities on behalf of candidates, initiatives and the Democrat Party that should be reported pursuant to RCW 42.17.550.

RCW 42.17.550. Independent expenditure disclosure.

A person or entity other than a party organization making an independent expenditure by mailing one thousand or more identical or nearly identical cumulative pieces of political advertising in a single calendar year shall, within two working days after the date of the mailing, file a statement disclosing the number of pieces in the mailing and an example of the mailed political advertising with the election officer of the county or residence for the candidate supported or opposed by the independent campaign expenditure or, in the case of an expenditure made in support of or in opposition to a ballot proposition, the county of residence for the person making the expenditure.

During the past five years WSLC has affected elections by making unreported independent expenditures contacting the public in various ways. In every election the WSLC commits thousands of dollars in resources to political communications, from phone calls to leafleting, from door-to-door visits to mailings.

The state labor council's job is to fulfill the national AFL-CIO's agenda in this state. When the national AFL-CIO says millions of fliers will be distributed across the country in support of state and federal candidates, the WSLC is the agent that does the dispersing in this state. When volunteers go door-to-door handing out labor voting guides and candidate comparisons, they are trained by the WSLC and use WSLC written material.

In every election, WSLC political director Diane McDaniel charts out the course she wants to pursue. Once she has done this, she recruits the necessary components to contact the people she has determined are persuadable, and she targets her resources toward them. This is all done with the express intent of affecting elections. It has monetary value and falls under the commission's definitions of an independent expenditure. None of this is reported by WSLC.

Below are numerous unreported independent expenditures.

1. WSLC has started a massive communications campaign for the 2004 election cycle.

- a. WSLC collects data they use to target specific people for campaigning. See Exhibits 5, 7, and 15.
 - b. WSLC plans to contact thousands of voters through the distribution of written material. See Exhibits 6, 8, 10, and 11.
 - c. WSLC uses phone banking to contact voters in attempts to affect the election. See Exhibits 8 and 10.
 - d. WSLC has trained and plans to train volunteers to go door-to-door in attempts to affect the outcome of the election. See Exhibits 5, 6, 8, 9, 10, and 13.
 - e. WSLC is currently promoting an initiative which was filed by Robby Stern, Special Assistant to the WSLC President. This initiative campaign is being run from the WSLC office. See Exhibit 25.
 - f. The AFL-CIO is promoting "Target 5000," a union-wide initiative to elect union members to public office (see Exhibit 12). In Washington state, Bob Hasegawa is running as a candidate for the House of Representatives, 11th Legislative District (see Exhibit 14). Any WSLC expenditures in time, staffing, volunteer organization or candidate training should be factored into the total of WSLC funds dedicated to political purposes.
 - g. On September 2, 2004, the WSLC will participate in a door-to-door effort to talk to union households about the 2004 presidential election (see Exhibit 31). Materials specifically mention the WSLC's opposition to President Bush and Washington state Republican gubernatorial candidate Dino Rossi. The WSLC is investing time and resources to coordinate this door-to-door effort. Additionally, WSLC President Rick Bender has urged all affiliated unions to close their offices early on September 2 to allow staff to participate in the effort.
2. In the 2002 election, WSLC used a similar campaign.
 - a. WSLC used lists it created to target voters it wished to persuade. See Exhibit 5.
 - b. In the 2002 election, WSLC distributed written material to thousands of voters. See Exhibit 4.
 - c. In 2002, WSLC contacted thousands of voters through phone banking in attempts to affect the election. See Exhibit 4 and 5.
 - d. WSLC staff trained volunteers who then used labor council-produced literature and phone banks to contact voters. See Exhibits 4 and 5.
 3. In the 2000 election, WSLC used a similar campaign.
 - a. Large amounts of leaflets were distributed by WSLC in attempts to sway the public at the last minute. See Exhibits 2 and 3.
 - b. WSLC trained volunteers and contacted targeted individuals attempting to sway their opinion on the election. See Exhibit 3 and 5.
 4. During the 1999 election WSLC produced and distributed many fliers in order to persuade voters to oppose I-695. See Exhibit 1.

These and other independent expenditures are not reported by the WSLC as required by RCW 42.17.550.

II. WSLC IS INELIGIBLE FOR "INTERNAL POLITICAL COMMUNICATION" EXEMPTION FROM REPORTING (Violation of RCW 42.17.100)

"Internal political communications" are exempt from reporting requirements, but the WSLC should not be eligible to claim this exemption for political communications to individuals who are members of affiliated unions.

RCW 42.17.100

"Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization;

Exhibits 1 through 16 demonstrate that employees of the Washington State Labor Council are paid to conduct activities identical to those of a PAC or political party. The cost of the well-paid staff dedicated to campaign work, printing, publication production, data management, phone lines, phone bank calls, postage, fundraising solicitations, candidate recruiting/training, voter file acquisition, coding voter preference in a database, transporting targeted voters to the polls, developing news releases/opinion editorials related to election issues, presenting website text related to elections, and the entire outlay for endorsement conventions are not currently being disclosed to the citizens of the state.

Doubtless WSLC will claim to be exempt from reporting any attempt to sway the voting behaviors of a half million citizens who live in households where one person currently or formerly is a member of a local union. The "member communication" exemption is not one that the council may legally claim for these hundreds of thousands of people.

A. WSLC is not a "labor organization" with individual members.

The WSLC officials will doubtless cite the exemption described in RCW 42.17.100 as an explanation for their failure to report some of the independent expenditures they make each election cycle. However, the WSLC is not eligible for this exemption, as the Council fails to fit within the definition of a labor organization and makes political communications to individuals who are not members of the council.

1. The United States Department of Labor differentiates between bargaining representatives and labor councils.

As an example of the difference between labor organizations and labor councils, 29 CFR 401.9 exempts state and local central bodies from the definition of a labor organization.

29 CFR 401.9 - Labor organization.

Labor organization means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, **other than a State or local central body.** [Emphasis added]

2. Members of affiliated unions are not automatically members of the WSLC.

Only locals unions and councils affiliated with the AFL-CIO are eligible for membership with the WSLC. Individual union members are not eligible to affiliate with the WSLC. The WSLC's own website states:

The WSLC is a voluntary organization; only locals and councils affiliated with the American Federation of Labor and Congress of Industrial Organizations are eligible to affiliate. Although not every AFL-CIO local or council is a dues-paying affiliate, the WSLC represents the the [sic] official position of the AFL-CIO in our state. It operates by consensus and has no legal or constitutional authority to impose a position or policy on any local union or trade council.¹

Individual union members cannot be considered as members of the WSLC; therefore, political communications to these individuals cannot be exempted from reporting requirements using RCW 42.17.100.

3. WSLC does not have individual "members" under the statute or under any logical criteria.

Individual workers do not join the WSLC. Only organizations incorporated as unions are "members" of the WSLC. Workers are members of local unions.

The WSLC cannot claim that its communications are limited to contributors of the WSLC political committee. With very few exceptions, workers do not "contribute" to the WSLC PAC. Most funds for the PAC are drawn from the general funds of the WSLC. Thus, no "internal political communication" exemption applies to communication with any workers other than those few who actually contribute to the PAC.

¹ Washington State Labor Council website, <http://www.wslc.org/whoweare.htm>

Workers do not have knowledge of being “members” of a “Washington State Labor Council.” It is a basic criterion for membership that members know of their inclusion in a membership group. Workers in union-represented workplaces know that they are members of their trade union, but do not think of themselves as joining the WSLC.

Only local labor organization officials elect to “join” or discontinue their “membership” in WSLC. Since the individual workers have no decision-making role in joining WSLC, they cannot be considered “members” merely because WSLC officials would like to market political ideology to them.

4. WSLC officials’ actions acknowledge that it does not have members.

WSLC officials presume they do not share a contribution limit with local union organizations which *are* the members. If each member of each local who joined WSLC *was* an actual member of WSLC, there would be a direct vertical affiliation between WSLC and local unions.

If every member of a local union was inextricably a member of WSLC, it would be irrefutable proof that WSLC and the local union are vertically affiliated entities. As such, WSLC would recognize that as affiliates sharing the same members, they also share a contribution limit. WSLC filings indicate that they do not treat each local union as an affiliate having members in common with the WSLC.

5. Absurdity demonstrated.

WSLC claims that anyone who might be directly or indirectly associated with one of the member unions may be the target of electioneering marketing is absurd. The same law specifying the “member communication” exemption presumes actual members or stockholders of the organization. Using the flawed logic that spending money to sway the votes of a member of a member organization would allow the Association of Washington Business (AWB) to refuse to report communication with any stockholder of any corporate entity joining the AWB. Everyone in the state whose pension system includes stocks in one of the companies would be a “member” of the AWB.

B. WSLC officials make independent expenditures marketing to union members who are not in affiliated unions.

The unions who affiliate with WSLC change from year to year, but officials of Washington State Labor Council appear to market to anyone who has ever been in a union at some point affiliated with the WSLC.

The directory of affiliated unions from 2004 shows that 91 local unions who were affiliated in 1998 are no longer affiliated (see Exhibit 20).

C. WSLC officials make independent expenditures marketing to citizens who have ceased working in union-represented workplaces.

The list utilized by WSLC for calls, voter identification and tracking, and for direct mail includes citizens who have retired or stopped working in union-represented workplaces. The lack of attention paid to the list serves the interest of WSLC in having the broadest audience and range of activities exempt from reporting.

In today's mobile society, easily five percent of workers experience a job turnover each month (Exhibit 21). Failing to maintain a list from year to year guarantees that the number of claimed "member" exemptions grows larger and larger. If WSLC does not take aggressive steps to keep this list limited, its disregard can be seen as evidence of intention to stretch the "internal political communication" exemption beyond what the law permits.

Additionally, the WSLC is reaching out to union retirees (Exhibit 15 and 22).

D. WSLC officials make independent expenditures in marketing to family members of union-represented workers.

Exhibit 22 demonstrates the AFL-CIO's intention to mobilize, through affiliated state councils, not only members of affiliated unions, but also their spouses and voting-age children. Spouses and voting-age children of union members clearly fall outside of the scope of the internal communication exemption provided for by RCW 42.17.100.

In conclusion, the "internal political communications" exemption in RCW 42.17.100 is designed to allow organizations to make internal communications to the organization's direct members. This exemption accommodates the reasonable expectation that an organization can communicate with its members, just as a corporation can with its staff and stockholders.

The WSLC goes one step beyond this exemption by making political communications to members of affiliated unions within the council, who themselves are not members of the WSLC. Additionally, the WSLC makes political communications to individuals who are not even members of affiliated unions, such as union retirees and spouses and children of union members. The WSLC stretches the "internal communications" exemption beyond any rational use to cover all manner of political communications.

The WSLC is eligible to claim this exemption for internal communications only when communicating with the affiliated unions within the council, not union members, and should report any independent expenditures, are required by RCW 42.17.550.

III. WSLC EXCEEDS SHARED CAMPAIGN CONTRIBUTION LIMITS (Violation of RCW 42.17.640 & 42.17.660)

The Washington State Labor Council operates as an affiliation of more than 550 local unions and trade councils. Due to this affiliation, the WSLC may be in violation of state campaign finance law restricting the amounts an entity and its affiliates may contribute to candidates.

RCW 42.17.640 imposes contribution limits on a person or entity making contributions to a candidate. Additionally, RCW 42.17.660 discusses the attribution of contributions by controlled entities.

RCW 42.17.660(2)

Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association. All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the same person or entity.

RCW 42.17.660(2) indicates that the affiliates and subsidiaries of an entity will be considered a single entity for the purpose of calculating the campaign contribution limits that apply to the entity.

The Washington Court of Appeals case *Robert Edelman v. State of Washington ex. rel. Public Disclosure Commission*, No. 28563-1-II (under review by the Washington Supreme Court)², provides further insight into this RCW 42.17.660(2). The Court of Appeals Division II held that this statute is not ambiguous and can be understood by a plain reading of the statute.

The Court indicated that RCW 42.17.660(2) "clearly provides that where any sub-unit of a corporation or labor union makes a political campaign contribution, this contribution is considered to have been made by its affiliates as well for purposes of determining whether the \$500 individual contribution limit of RCW 42.17.640(1) has been exceeded."

At issue in *Edelman* was a Public Disclosure Commission administrative regulation (WAC 390-16-311) that released local affiliates from having to combine their

² Regardless of the outcome of the Supreme Court's decision, the WSLC may still be in violation of shared campaign contribution limits. At issue in *Edelman* is the PDC's authority to promulgate WAC 390-16-311 and whether or not horizontal affiliations can exist between subsidiaries of a parent organization. If the Supreme Court rules that WAC 390-16-311 falls within the PDC's statutory authority, the WSLC must still comply with shared contribution limits with its vertical affiliates.

contributions toward a single limit when the “parent” or “umbrella” of the organization makes no contribution to a particular campaign. The Court of Appeals ruled that the PDC had exceeded its statutory authority in promulgating WAC 390-16-311.

In essence, the Court of Appeals did away with the concept that affiliations must flow from a parent organization for the purposes of RCW 42.17.660, and held that the contributions of independent units within a parent organization are to be considered as being made by a single entity.

The Washington State Labor Council, AFL-CIO is an organization that represents and is affiliated with over 550 local unions and trade councils. The WSLC has limited eligibility for affiliation: only locals and councils affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) may join the WSLC. The WSLC website states that the WSLC “is the largest labor organization in our state and is the only organization representing all AFL-CIO unions in Washington state.” The WSLC refers to itself as a cohesive unit and is a single entity made up of many local affiliates.

RCW 42.17.660(2) states that two or more entities are treated as a single entity if one of the two or more entities is a “local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association.”

Accordingly, under RCW 42.17.660, the Washington State Labor Council and its affiliates frequently exceed campaign contribution limits as prescribed by RCW 42.17.640. Several examples are listed below.

The WSCL contributed \$625 to the 2004 primary campaign of Sen. Lisa Brown, 3rd Legislative District. Subsequently, several WSCL affiliates made contributions that, when combined with WSCL’s contribution, exceeded shared contribution limits. The Amalgamated Transit Union of Spokane contributed \$100 to the same campaign. The UFCW Local 1439 in Spokane made two contributions totaling \$675. The UFCW Local 1001 in Bellevue made a contribution of \$425.

The WSCL contributed \$350 to the 2004 primary campaign of Sen. Rosemary McAuliffe, 1st Legislative District. Several WSCL affiliates made contributions that, when combined with WSCL’s contribution, exceeded shared contribution limits. The IBEW Local 191 in Everett contributed \$675. The IBEW Local 46 in Seattle contributed \$375, while the IBEW Local 46 PAC contributed \$300. The UFCW Local 1001 PAC contributed \$675.

The WSCL contributed \$350 to the 2004 primary campaign of Rep. Al O’Brien, 1st District. Several WSCL affiliates made contributions that, when combined with WSCL’s contribution, exceeded shared contribution limits. The Amalgamated Transit Union in Seattle contributed \$625. The Laborers’ Local 348 in Pasco contributed \$500. The UFCW Local 1001 in Bellevue contributed \$500.

These examples are random selections of state legislative races. Further investigation will provide multiple violations of the limits on shared contributions.

Using this analysis, the WSLC is in violation of campaign contribution limits as specified by RCW 42.17.640.

IV. USE OF PUBLIC FUNDS TO AFFECT ELECTIONS (Violation of RCW 42.17.128)

The WSLC receives public funds which cannot be used for election-affecting purposes.

RCW 42.17.128. Use of public funds for political purposes.

Public funds, whether derived through taxes, fees, penalties, or any other sources, shall not be used to finance political campaigns for state or local office.

A. WSLC receives public funds which cannot be used to finance political campaigns.

The WSLC is the recipient of public funds through government grants. The WSLC's 990 forms, filed each year with the Internal Revenue Service, indicate that the organization is the recipient of government contributions (grants). These grants, in the millions of dollars, are a major source of funding for the WSLC.

Form 990, Line 1c

2000 \$1,894,244 (Exhibit 28)

2001 \$1,985,805 (Exhibit 29)

2002 \$1,797,186 (Exhibit 30)

Examples of public funds received, as well as the source or contract number:

- \$484,142 - Employment Security Department #19527-00
- \$755,628 - Employment Security Department #19527-04, to provide continued labor rapid response assistance to dislocated workers statewide, 4/30/00.
- \$755,628 - Employment Security Department #19527-05, to provide continued labor rapid response assistance to Dislocated Worker Unit and assist in evaluating potential layoff and closure events, 6/30/00.
- \$4,619,684 - U.S. Department of Labor Employment & Training Administration. "Welfare-to-Work Competitive Grants." May 14, 2002.
- \$354,301 - Project Help, Department of Labor and Industries, "Project Help Annual Expenses." Sept. 27, 2002.
- \$771,995 - Rapid Response Workforce Investment Act (WIA) Contract Number 00-7135-796. Oct. 1, 2002.

- \$100,000 - State Board of Community and Technical Colleges for community and technical college liaisons. (Grabbe, Jim. Phone interview by Hans Zeiger. June 11, 2003)

Pursuant to RCW 42.17.128, these funds cannot be used to finance political campaigns of state or local office. However, the WSLC receives public funds through government grants and these funds are either commingled with WSLC membership dues and used directly for election-affecting purposes, or the public funds are used to offset election-affecting expenditures.

As discussed below in IV.B and IV.C, these public funds are either used to affect elections, thereby violating RCW 42.17.128, or the public funds are segregated and not used for any political campaigns. If the public funds are segregated, this affects the percentage of the WSLC's total expenditures used for political contributions.

B. WSLC makes expenditures for election-affecting purposes using public funds.

The WSLC makes expenditures for election-affecting purposes and direct contributions to state and local political campaigns, as the attached exhibits demonstrate. Regardless of whether public funds are used directly for these contributions or to merely replace WSLC expenditures, contributions to state and local candidate that are in part supplied by public funds violate RCW 42.17.128.

C. If, however, the public funds the WSLC receives are segregated, only the income that may be used for election-affecting purposes should be used in calculating the WSLC's primary purposes.

If the WSLC segregates all funds received from government grants so as not to use it for contributions to political campaigns, this segregation affects what percentage of the WSLC's total expenditures are used for political contributions. The percentage must be calculated using *only* funds that may be used for election-affecting purposes.

Thus, the WSLC is either violating RCW 42.17.128 by using public funds for political contributions, or the percentage of the WSLC's budget designated to political activity is much higher after public funds have been segregated. This point is further discussed in section V.C.

V. WSLC STATES THAT AFFECTING ELECTIONS IS A PRIMARY PURPOSE, YET FAILS TO REGISTER & REPORT AS A POLITICAL COMMITTEE. (Violation of RCW 42.17.040 and 42.17.080)

Political committees are required to file a statement of organization and report contributions and expenditures.

RCW 42.17.040(1). Statement of organization by political committees. Every political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, shall file a statement of organization with the commission and with the county auditor or elections officer of the county in which the candidate resides, or in the case of any other political committee, the county in which the treasurer resides.

One of the WSLC's primary purposes is to affect governmental decision-making by supporting or opposing candidates and ballot propositions. However, the WSLC has not filed a statement of organization as a political committee and does not report contributions and expenditures.

A. WSLC activities are *not* union activities.

The WSLC is not defined as a representative union and does not actively engage in collective bargaining or workplace representation.

This raises the question of what exactly the WSLC is and does. The WSLC represents more than 550 local unions and trade councils and offers many services to its affiliates. The WSLC website lists a summary of services and grant programs which it offers to its affiliates: education, legislative action, political action, communications, research, and affiliate and direct worker assistance.³

B. Affecting elections is among the primary purposes of the WSLC.

According to *State v. Evans*, 86 Wn.2d 503 (1976), an organization must comply with the registration and reporting requirements for a political committee if that organization makes or expects to make expenditures in support of or in opposition to any candidate or any ballot proposition, and the organization has as *one of its primary purposes* the goal to affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions. This is referred to as the primary purpose test.

In the *State of Washington, ex rel. Evergreen Freedom Foundation v. Washington Education Association* (No. 97-2-01419-8), the court held that to determine "primary purpose" of an organization, the amount spent is meaningful only in relation to the other purposes and expenditures of the organization.

Additionally, the Public Disclosure Commission (PDC) has an informal "Policy Statement" on the subject of "Organizations which temporarily become political committees." The Policy Statement was drafted by then Assistant Director David Clark in the late 1980s. Although we do not represent that the Policy Statement reflects the official position of the PDC, it is instructional for indicating that the WSLC may have

³ Washington State Labor Council website, "Services," <http://www.wslc.org/services/index.htm>

operated as a political committee for specific periods of time. The Policy Statement begins:

Some groups which are continuing organizations with a variety of purposes may from time to time become involved in election campaigns to support or oppose candidates, or more frequently, ballot measures. The purpose of this policy statement is to provide guidance and procedures for these organizations to comply with the provisions of chapter 42.17 RCW.

It is recognized that such organizations may at certain points in time meet the definition of "political committee" as is found in RCW 42.17.20. It is also recognized that the organizations exist, either during the election period or at other times, for purposes that are unrelated or only distantly related to an election campaign.⁴

An examination of the WSLC's organization and activities indicate that affecting elections is one of the primary purposes of the WSLC.

1. The WSLC itself states that election-affecting activities are among its primary purposes.

Legislative action and political action are two of the primary services the WSLC offers, as stated on the WSLC website.⁵

The WSLC describes its political action on its website:

POLITICAL ACTION -- Spearheaded by Political Director Diane McDaniel, the WSLC has an aggressive program to educate and activate rank-and-file union members around the state on where political candidates stand on working people's issues. The WSLC's political education program, considered a national model by the AFL-CIO, offers instruction and assistance for unions interested in voter registration drives, absentee ballot sign-up, labor candidate training, establishing and building political action funds, and communicating with members via mail, phone and worksite leafletting [sic].⁶

Additionally, the WSLC Communications department "is available to help its affiliates plan media strategies for events and **campaigns**."⁷ (Emphasis added.)

When asked about broad labor concerns such as shrinking membership, AFL-CIO President John Sweeny told union leaders in Tacoma on August 26, 2004 that "[t]he biggest and most important thing right now is the [presidential] election." (Exhibit 26)

⁴ PDC Policy Statement, at 1.

⁵ Washington State Labor Council website, "Services," <http://www.wslc.org/services/index.htm>

⁶ Washington State Labor Council website, "Services," <http://www.wslc.org/services/index.htm>

⁷ Washington State Labor Council website, "Services," <http://www.wslc.org/services/index.htm>

Additional news articles in Exhibit 26 indicate that the AFL-CIO is to invest a maximum amount of resources into the 2004 election cycle. Any strategies will be implemented through the state affiliates, including the WSLC.

Thus, election-affecting activity ranks high on the list of the "services" that the WSLC offers to its affiliates, and is one of the WSLC's stated primary purposes.

2. The WSLC engages in significant election-affecting activities.

When compared to other obscure purposes, significant resources are dedicated to the WSLC's election-affecting activities. Exhibits 1 through 16 demonstrate a variety of political activities the WSLC engages in. For the 2004 election cycle, the WSLC:

- Collected data to target specific people for campaigning (Exhibits 5, 7, and 15).
- Used phone banks to contact voters (Exhibits 8 and 10).
- Plans to contact thousands of voters through the distribution of written material (Exhibits 6, 8, 10 and 11).
- Plans to train volunteers to go door-to-door to distribute election-related messages (Exhibits 6, 8, 9, 10 and 13).

Every election cycle, the WSLC makes candidate endorsements, distributes literature to members of affiliated unions, organizes volunteer efforts, and motivates union members to be politically active.

Additionally, the salaries, benefits and expenses of WSLC officers and staff members must be calculated in determining the amount of expenditures directed toward affecting elections.

As previously noted, the WSLC is currently involved in several political activities.

The WSLC is currently promoting an initiative which was filed by Robby Stern, Special Assistant to the President. This initiative campaign is being run from the WSLC office (Exhibits 25 and 26).

The AFL-CIO is promoting "Target 5000," a union-wide initiative to elect union members to public office (Exhibit 12). In Washington state, Bob Hasegawa is running as a candidate for the House of Representatives, 11th Legislative District (Exhibit 14). Any WSLC expenditures in time, staffing, volunteer organization or candidate training should be factored into the total of WSLC funds dedicated to political purposes.

On September 2, 2004, the WSLC will participate in what is being called "the biggest single-day election mobilization in the union movement's history,"⁸ and the council is urging all union members, leaders and staff to go door-to-door to talk to union households about the 2004 presidential election (Exhibit 31). Materials specifically

⁸ Washington State Labor Council website, WSLC Reports Today, August 30, 2004, <http://www.wslc.org/reports/latest.htm>

mention the WSLC's opposition to President Bush and Washington state Republican gubernatorial candidate Dino Rossi. While this is purported to be a volunteer effort, the WSLC is investing time and resources to coordinate this door-to-door effort. Additionally, WSLC President Rick Bender has urged all affiliated unions to close their offices early on September 2 to allow officers, union representatives, stewards and other staff to participate in the walks.

3. The WSLC produces publications that are significantly oriented toward affecting elections.

Major portions of the WSLC newsletter are devoted to reporting on political campaigns and candidates for office. The WSLC website publicizes many of the WSLC's election-affecting activities.

Exhibits 1, 2, 3, 4, 6, 8, 10, 11, and 22 all document examples of the WSLC's election-affecting publications.

The cost to produce and distribute these publications is significant and must be calculated in determining what percentage of the WSLC's activities are dedicated toward election-affecting purposes.

4. The WSLC makes large political contributions each year.

In addition to all of its own election-affecting activities and publications, the WSLC makes direct political contributions.

Exhibit 23 documents that from January 30, 2001 until August 16, 2004, the WSLC reported direct political contributions of \$254,366.

5. The AFL-CIO has raised member dues to mobilize union household members in the 2004 presidential election.

On March 10, 2004, the AFL-CIO approved a \$44 million dollar effort to "mobilize union household voters in November" (Exhibit 27). Unions agreed to pay a 48-cent assessment per member.

A similar assessment was approved for the 2002 election cycle and was intended to pay for the political program through 2005. (See Exhibit 26, "AFL-CIO Facing Major Financial Woes," Leigh Strobe, Associated Press, November 28, 2003.)

This assessment will be implemented through state federations, such as the WSLC. Thus, the WSLC is applying an additional per-member assessment for the sole purpose of raising fund for election-affecting activities.

C. The “meaningful” amount of political expenditures must be calculated after segregating public funds from the WSLC’s total expenditures.

As discussed in section IV.C, the WSLC is the recipient of public funds, the use of which for political campaigns is prohibited. In analyzing whether the WSLC should be required to register as a political committee, any expenditures for election-affecting purposes must be compared to the WSLC’s segregated non-public funds—the only funds that *may* be used for election-affecting purposes.

For example, the WSLC’s 2002 IRS Form 990 reports total expenses of \$4,167,989. However, \$1,797,186 of the WSLC’s revenue was from government grants. These funds cannot be used for election-affecting purposes, so the remainder of the WSLC’s funds that are available for election-affecting purposes would be \$2,370,803.

This segregation of public funds becomes significant when applying the “primary purpose” test to the WSLC’s political activities. Once public funds are segregated out of the WSLC’s total expenditures, a higher percentage of their funds are dedicated to political activities.

D. When compared to other purposes of the WSLC, election-affecting activities are among primary purposes.

The WSLC may claim that its primary purpose is to organize and assist in worker strikes. However, strikes take place infrequently, while the WSLC is involved in elections and political activity every year and throughout the year.

E. The WSLC’s highly political nature warrants an investigation that can only be accomplished through the proper enforcement agencies.

An examination of the evidence offers the consistent conclusion that the WSLC spends a meaningful amount of its finances on election-affecting activities, especially relative to other obscure purposes of the organization.

Without a full investigation by the proper enforcement authorities, the actual percentage of the WSLC’s election-affecting activities will be difficult to quantify. Additionally, the WSLC may not be filing properly, making it impossible to rely on publicly disclosed records alone. This consideration may necessitate an independent audit of the WSLC’s political expenditures. We recommend an investigation by the Attorney General’s office to examine the following items for further confirmation of the WSLC’s political expenditures:

- The use of the organization’s name in endorsing or opposing candidates or ballot measures.
- Officers, employees, or members who spend organization time working on a campaign.
- WSLC donations to WSLC-PAC.

- Direct WSLC donations to political parties and candidates.
- Expenditure of organization funds in a campaign.
- Solicitation of funds or set aside of a portion of regular income for the express purpose of a campaign.
- Staff and officer time dedicated to organizing and staffing election affecting activities.
- The percentage of WSLC newsletters that focus on political campaigns and ballot measures.
- The cost of writing, printing and distributing WSLC newsletters.
- The cost of writing, printing and distributing election-cycle materials.
- The cost of election-affecting communications to members of affiliated unions, families members of unions workers, and union retirees.

VI. EXCEEDING CONTRIBUTION LIMITS BY CREATING SECOND, ILLEGALLY HIDDEN PAC (Violation of RCW 42.17.640, 42.17.660 and WAC 390-16-309)

In 2000 and 2001, the officers of the WSLC and its political committee, Washington State Committee on Political Education (COPE), created a second political committee for providing contributions to candidates who had already received maximum contributions from WSLC. This second committee was called the Supporting Intelligent Candidates-PAC (SIC-PAC). In creating this second committee, the WSLC possibly violated shared contributions limits.

Officers of SIC-PAC for the 2000 election year were Lori Province, Chair, and Viona Latschaw, Recording Secretary. Janet Hays acted as Treasurer.

The officer of Supporting Intelligent Candidates-PAC for the 2001 election year was Lori Province, Chair. Janet Hays acted as Treasurer. (See Exhibit 18, SIC-PAC Registration form C1PC, years 2000 & 2001.)

As discussed above in Section VI, RCW 42.17.640 designates campaign contributions limits, and RCW 42.17.660 states that two or more entities will be treated as a single entity if one of the entities is a subsidiary, branch, or department.

The WSLC claimed that this political committee was governed only by "abbreviated reporting" requirements when in fact it had donated in excess of the threshold and had received donations in excess of the threshold.

A. SIC-PAC is an affiliated entity of the WSLC and therefore the two political committees share a contribution limit.

SIC-PAC's treasurer and principal officers are all employees of the WSLC. Since the treasurer and principal officers of the SIC-PAC are all employees of the WSLC, the WSLC has a controlling interest in the affairs of the political committee.

The contributions to the SIC-PAC are from officers and support staff of the WSLC. The largest aggregate donations to the SIC-PAC in 2000 and 2001 were from Rick Bender, who is the president of the WSLC. The second largest aggregate contribution in 2000 and 2001 to the SIC-PAC was from Alan Link, the secretary-treasurer of the WSLC, as well as the treasurer of the Washington State Committee on Political Education, which is the official political committee of the WSLC.

Most of the principal contributors to the SIC-PAC gave significant contributions to the WSLC's official political committee.

B. The WSLC and the SIC-PAC exceeded the contribution limit during the 2000 and 2001 elections.

In the 2001 election, the two political committees gave the maximum amount to two candidates.

- WSLC gave \$600 to the Jean Berkey campaign for both the primary and the general. SIC-PAC gave the maximum in the general.
- The WSLC gave \$600 to the Brian Sullivan campaign both in the primary and the general. SIC-PAC did the same.

In the 2000 election the WSLC and its affiliates combined with the SIC-PAC exceeded the contribution limit in a number of primary and general elections (Exhibit 17).

C. The officers of SIC-PAC did not qualify for abbreviated reporting and should be penalized for concealing election influence.

In December 1999, SIC-PAC filed the registration form for political committees for the year 2000. On line 3 of the form SIC-PAC indicated that it would follow the "Abbreviated Reporting" option in which the political committee must declare that it will raise and spend no more than \$2,000 and will accept no more than \$200 in the aggregate from any one contributor (Exhibit 18).

However, SIC-PAC received aggregate contributions from individuals in excess of \$200 and collected more than \$2,000 (Exhibit 19). Additionally, SIC-PAC contributed in excess of \$2,000 in 2000 (Exhibit 19).

In summary, Supporting Intelligent Candidates Political Action Committee committed numerous campaign finance violations including exceeding shared contribution limits and reporting improperly.

Either the WSLC or the contributors to SIC-PAC who are also WSLC employees should be cited for these campaign finance violations. For the years 2000 and 2001, the WSLC employees who contributed to SIC-PAC were:⁹

⁹ See Exhibit 19, SIC-PAC C3 forms, 2000 & 2001

Rick Bender, Council President
Alan Link, Secretary-Treasurer
Bernice Vance, Account Manager
Dorinda Loomans, Education and Safety Director
Janet Hays, Administrative Assistant
Jim Tusler, Labor Liaison
Leora Province, Labor Liaison
Robert Stern, Assistant to the President
Robert New, Accounting staff
Steve Ignac, Labor Liaison
Viona Latschaw, Payroll Secretary

VII. EARMARKED OR CONDUIT CONTRIBUTIONS (Violation of RCW 42.17.670 earmarking or RCW 42.17.730 conduit)

As has been shown in the preceding section, Washington State Labor Council officials are not adverse to finding ways to move money to candidates despite the limits imposed by current state law. In addition to the violation of exceeding contribution limits caused by these actions are violations of laws restricting "earmarking" and serving as an intermediary for a contribution.

RCW 42.17.670. Attribution of contributions generally - "Earmarking."

All contributions made by a person or entity, either directly or indirectly, to a candidate, to a state official against whom recall charges have been filed, or to a political committee, are considered to be contributions from that person or entity to the candidate, state official, or political committee, as are contributions that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, state official, or political committee. For the purposes of this section, "earmarked" means a designation, instruction, or encumbrance, whether direct or indirect, expressed or implied, or oral or written, that is intended to result in or does result in all or any part of a contribution being made to a certain candidate or state official. If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate or state official, the contribution is considered to be by both the original contributor and the conduit or intermediary.

RCW 42.17.730. Contributions on behalf of another.

(1) A person, other than an individual, may not be an intermediary or an agent for a contribution.

(2) An individual may not make a contribution on behalf of another person or entity, or while acting as the intermediary or agent of another person or

entity, without disclosing to the recipient of the contribution both his or her full name, street address, occupation, name of employer, if any, or place of business if self-employed, and the same information for each contributor for whom the individual serves as intermediary or agent.

A. The use of SIC-PAC to make contributions constitutes a violation of these laws.

The officers who established SIC-PAC served as agents for contributions of the Washington State Labor Council in the 2000 and 2001 election.

The WSLC "earmarked" funds provided to SIC-PAC for candidates who had already received maximum contributions.

B. The Washington State Labor Council earmarks contributions via Democrat party organizations.

WSLC made unusually large contributions to various Democrat organizations over the last few years. Exhibit 24 documents that, from February 16, 2001 until May 18, 2004, the WSLC gave \$182,445 to the Democrat Party.

Commonly, these contributions are made to specific legislative district organizations where the WSLC or affiliates have made maximum contributions. At times these contributions are made to the House or Senate Democrat campaign committees in the exact amount of a maximum contribution to a candidate.

VIII. USE OF NON-MEMBER FEES TO AFFECT ELECTION (Violation of RCW 42.17.760)

Although the State Supreme Court is considering whether RCW 42.17.760 will be enjoined, the decision will be made within months. We wish to preserve this issue by noting the WSLC violations now, pending a resolution which preserves the law as sought by the Office of the Attorney General.

RCW 42.17.760. Agency shop fees as contributions.

A labor organization may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual.

Many of the affiliates of Washington State Labor Council have mandatory "agency shop fees" for those who decline to join the union. The funds collected from workers paying agency shop fees may not be used to affect elections. Unless the WSLC takes deliberate steps to assure that each affiliates' "per capita" council assessment does not include any funds collected as agency shop fees, the general funds may not be used as political contributions.

A. WSLC collects funds including "agency shop fees"

Many public and private affiliates of the Washington State Labor Council utilize the "union security clause" to compel payment of agency shop fees from workers who do not join. Specific unions with known union security clauses include:

- Washington Federation of State Employees
- Service Employees International Union locals
- Washington State Council of County, City Employees locals
- International Association of Firefighters locals
- Service Employees International Union locals
- Amalgamated Transit Union locals
- Communication Workers of America locals
- Washington Federation of Teachers

Local unions joining the WSLC are asked to pay a fee to the council based on a "per-capita" levy. This assessment is not described as a "per-member" assessment, but rather appears to be based upon the number of represented workers which necessarily includes agency fee payers.

B. No evidence that WSLC refunds agency fee payers.

Despite the fact that fee payers' money is collected by the WSLC, fee payers do not report receiving refunds from the council. Likewise, no evidence from IRS forms or other records suggests that the WSLC attempts to segregate funds collected from agency fee payers.

C. The WSLC uses funds collected from agency fee payers to affect elections.

PDC records show WSLC has made direct political contributions of \$254,366 (Exhibit 23) from general funds.

Other exhibits demonstrate extensive investments in campaigns to sway the voting behavior of union workers, union workers' spouses, former union workers and retired union workers. RCW 42.17.760 does not include any exemption for member communication.

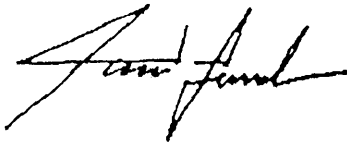
Still other exhibits demonstrate expenditures intended to affect the voting behavior of the general public. Voter lists, polling, push-polling, transporting identified voters to the polls, recruiting/training candidates, volunteer recruitment, and other activities are all examples of additional expenditures which may not be funded using monies collected from agency fee payers.

Once the Attorney General has successfully removed the legal cloud over RCW 42.17.760, action against the WSLC for violation of this law may be initiated with a statute of limitations based upon this notice.

IX. CONCLUSION

Accordingly, we ask the state to investigate the violations highlighted, and to take legal action to secure a court order to prevent these violations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jami Lund", with a stylized, cursive script.

Jami Lund
Evergreen Freedom Foundation
P.O. Box 552
Olympia, WA 98507

cc: Edward Holm, Thurston County Prosecuting Attorney

RCW 42.17.400 "Citizen Action" 45-day notice of campaign finance violations of the Washington State Labor Council.

INDEX TO EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
Exhibit No. 1	WSLC I-695 Flyers; Bob Partlow, <i>State union leader at odds with rank and file on I-695</i> , The Olympian, October 29, 1999.
Exhibit No. 2	AFL-CIO Website, <i>National Leafleting Day Nov. 6.</i>
Exhibit No. 3	AFL-CIO Website, <i>Working Families and Their Unions Stage Biggest Get-Out-The-Vote Drive Ever.</i>
Exhibit No. 4	AFL-CIO Website, <i>Working Families Mobilized in 2002 Elections.</i>
Exhibit No. 5	Washington Federation of Teachers Spotlight, Jan. 2002.
Exhibit No. 6	Rick Bender, President's Column, WSLC 2004 Legislative Report.
Exhibit No. 7	Leigh Strobe, <i>Labor approves funds to mobilize members against Bush</i> , Associated Press, March 10, 2004.
Exhibit No. 8	AFL-CIO Website, <i>Forging a greater political voice for working families</i> , February 25, 2003.
Exhibit No. 9	AFL-CIO Website, <i>Thousands of volunteers go door to door to education union members</i> , June 14, 2004.
Exhibit No. 10	AFL-CIO Website, <i>AFL-CIO Executive Council outlines 2004 working family election mobilization.</i>
Exhibit No. 11	2004 Endorsements of the WSLC, AFL-CIO
Exhibit No. 12	AFL-CIO Website, <i>People-Powered Politics Makes a Difference.</i>
Exhibit No. 13	WSLC Reports Today, <i>Labor Neighbor back in gear this weekend...so VOLUNTEER</i> , July 21, 2004.
Exhibit No. 14	AFL-CIO Website, <i>People-Powered Politics</i> , Bob Hasegawa.
Exhibit No. 15	Leigh Strobe, <i>Unions court retirees to vote for Kerry</i> , Seattle Post-Intelligencer, August 11, 2004.
Exhibit No. 16	AFL-CIO Website, description of <i>People-Powered Politics</i> .
Exhibit No. 17	Examples from 2000 election of the WSLC and its affiliates combined with the SIC-PAC exceeding contribution limits.
Exhibit No. 18	SIC-PAC Public Disclosure Commission C1PC forms, 2000 & 2001.

- Exhibit No. 19 SIC-PAC Public Disclosure Commission forms: C3 form for election year 2000, Schedule A to C4 for election year 2000, C3 form for election year 2001.
- Exhibit No. 20 1998 & 2004 Directory of affiliated unions, WSLC
- Exhibit No. 21 U.S. Census Bureau, *Dynamics of Economic Well-Being: Labor Force Turnover, 1996-1999*, July 2004
- Exhibit No. 22 Thomas Ginsberg and Jane M. Von Bergen, *AFL-CIO leaders exhort members to 'Dump Bush'*, The Inquirer (Philadelphia), March 18, 2004.
- Exhibit No. 23 Washington State Labor Council, AFL-CIO contributions to WSLC political committee, January 30, 2001 through August 16, 2004.
- Exhibit No. 24 Washington State Labor Council, AFL-CIO contributions to Democrat Party
- Exhibit No. 25 Washington Initiative No. 334, 2004; *Business, labor interests push separate workers' comp measures*, Puget Sound Business Journal, August 4, 2004.
- Exhibit No. 26 Rob Carson, *AFL-CIO head jumps all over Bush in Tacoma*, The News Tribune (Tacoma), August 27, 2004. John F. Harris and Jim VandeHei, *AFL-CIO gives nod to Kerry's campaign*, Washington Post, February 20, 2004. Leigh Strobe, *AFL-CIO President says Bush AWOL on jobs*, Associated Press, March 9, 2004. Leigh Strobe, *AFL-CIO facing major financial woes*, Associated Press, November 28, 2003.
- Exhibit No. 27 Leigh Strobe, *Labor approves funds to mobilize members against Bush*, Associated Press, March 10, 2004.
- Exhibit No. 28 Washington State Labor Council 2000 IRS Form 990.
- Exhibit No. 29 Washington State Labor Council 2001 IRS Form 990.
- Exhibit No. 30 Washington State Labor Council 2002 IRS Form 990.
- Exhibit No. 31 WSLC Online Daily report, August 30, 2004.
- Exhibit No. 32 EFF complaint to IRS for WSLC failure to report political expenditures.